Supreme Court, U. S.
FILED
JUN 16 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-1777

ARCHIE PELTZMAN,

Petitioner,

V.

AMERICAN RADIO ASSOCIATION.

Respondent,

PETITION FOR A WRIT OF CERTIORARI
TO THE NEWYORK SUPREME COURT-
APPELLATE TERM-FIRST-DEPARTMENT

Archie Peltzman,
Petitioner, Pro Se,
2483 W 16th St,
Brooklyn, N.Y. 11214
212-266-8225

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM,1977

NO.

ARCHIE PELTZMAN,
Petitioner

v.

AMERICAN RADIO ASSOCIATION AFL-CIO
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
NEW YORK SUPREME COURT-APPELLATE TERM-
FIRST DEPARTMENT

The petitioner,Archie Peltzman,pro se prays that a writ of certiorari issue to review the decision of the New York Supreme Court-Appellate Term-First Department entered in this case on December 8,1977.

OPINIONS BELOW

All orders and judgments are listed in the index and reproduced in full in the appendix.

Petitioner has no knowledge if any of the orders or per curiam opinion of the Appellate Term,has been published.

JURISDICTION

The refusal of permission to appeal by the Court Of Appeals,State Of New York was entered on April 27,1978.It is final. This petition is being filed within ninety days of that date.Market Street Ry.Co v Railroad Commission 324 U.S. 548,(1944).

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Sec.1257(3).

The federal question raised is indicated at pp.3-5.

QUESTIONS PRESENTED

1.DID CITY AND STATE COURTS OF NEW YORK VIOLATE PETITIONER'S RIGHT OF PROCEDURAL DUE PROCESS BY NOT CONSIDERING HIS FEDERAL MARITIME CLAIMS OF A PROHIBITIVE FEDERAL STATUTE PREVENTING A MARITIME UNION FROM DEMANDING MONEY FROM A SEAMAN FOR PROVIDING HIM WITH EMPLOYMENT?

2.WAS THE CITY COURT DECISION,AND THE APPELLATE TERM'S AFFIRMANCE ,ADEQUATE STATE GROUNDS TO DISMISS PETITIONER'S COMPLAINT FOR RETURN OF MONEY EXTORTED BY RESPONDENT IN VIOLATION OF MARITIME LAW?

STATUTES INVOLVED

United States Code,Title 46,Sec 599(a), 41 Stat 1006,Sec 10(a) Merchant Marine Act.

Revelant part follows:

**** If any person shall demand or receive,either directly or indirectly from any seaman,or from other person seeking employment as seaman,or from any person on

his behalf,any renumeration whatever for providing him with employment,he shall for every such offense be deemed guilty of a misdeameanor and shall be imprisoned not more than six months or fined not more than $500.00.

STATEMENT OF THE CASE

Petitioner,a seaman sued the respondent, a maritime union for return of money extorted from him in violation of a specific federal maritime statute.The complaint (App H) explains the cause of action.

The New York Civil Court held that the "claim is barred by the running of the statue of limitations."It further held that "the gravamen of this action is most analgous to an action for conversion".(AppB).

The petitioner first raised this question of his federal maritime rights in small claims court,(docket nr 6751-77,).Judge Dembitz dismissed the action,and suggested that petitioner could sue in the pro se part of New York Civil Court.

Petitioner sued in New York Civil Court where the action was dismissed by Judge Dembitz again on respondent's motion,and no hearing or trial was held,the pleadings were submitted.

Petitioner claimed in his pleadings that dues and fees,and assesments were coerced from him on pain of discharge from his employment,and were in violation of his maritime rights citing Title 46 U.S.C.Sec 599(a),labor laws protecting employees from

discrimination in hire and tenure,and the Civil Rights Law,and the Equal Employment Opportunities Act Sec 718 which forbids discrimination based on federal or state laws,or the Constitution of the United States. (App H).

This is a case of first impression in the maritime field,and this Court under Article three Sec 2 Of the Constitution has the jurisdiction to apply the maritime law in this case.

The state action dismissing the complaint nullifies the federal statute,and the intent of Congress which has passed the General Maritime Laws for the protection of the seamen,and has also passed laws subsidizing the Merchant Marine.

The state action also denies the petitoner his rights of "procedural due process"under the fifth and fourteenth amendments,and the application of federal decisions in maritime actions in state courts.

The Appellate Term affirmed the decision in a per curiam opinion and order (App C,D), and said that:

> "Plaintiff"s action to the extent it may be framed as one for conversion is barred by the three year statute of limitations,and to the extent it may be framed as one for breach of contract, is barred by the six year statute of limitations."

Motions to the higher Appellate Courts in the state for permission to appeal was denied for lack of jurisdiction(App A,E.F).

The highest Court that reviewed the merits of this case was the Appellate Term,and this writ is therefore addressed tothat Court.

Petitioner's pleadings of this specific federal cause of action,with twelve cases cited were ignored,and statelaw instead of federal law was applied.

REASONS FOR GRANTING THE WRIT

A. THE COURT BELOW HAS EVADED DECIDING THIS CASE ON THE PLEADINGS,AND HAS THEREBY DENIED PETITIONER OF A FEDERAL RIGHT BASED ON THE GENERAL MARITIME LAWS, AND THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION.

This Court has said in Fiske v Kansas 274 U.S. 380,(in reviewing State Court findings):***

> "where a federal right has been denied as the result of a finding shown by the record to be without evidence to support it,or where a conclusion of law as to a federal right,and a finding of fact are so intermingled as to make it necessary,in order to pass upon the federal question,to analyze the facts."

In Stern and Grossman's Supreme Court Practice are listed cases (p139) where state grounds have been used unreasonably

to avoid a decision relative to federal rights,and also in n 39,similar cases are discussed in Robertson And Kirkham, Jurisdiction of the Supreme Court of the United States,(p177-190)(Wolfson and Kurland ed 1951.)

In U.S. v Culbert,46 L.W. 4259 this Court held that coercing money from a bank president was a violation of Hobbs Act,reversing 548 F2d 1355.

Petitioner argues that coercing money from a seaman is a violation of*Title 46 Sec 599(a),which the state courts below have evaded recognizing,in violation of petitioner's rights of due process and equal treatment of the law.

Petitioner pleaded that dues,fees,and assessments had been extorted from him in violation of a specific maritime statue. The State Court ruled that the action was one of "conversion",and dismissed citing the three year statute of limitations for actions on"conversion",and citing Nichimen & Co.v Framen Steel Co.253 N.Y.S. 2d 713, (1964) as sole authority for the decision.

Petitioner argues that Nichimen has no relevance whatsoever to this case since neither party had pleaded conversion below, and that case was not related to maritime

* Words used in statute are to be given thier ordinary meaning in the absence of persuasive reasons to the contrary. Burns v Alcala,420 U.S. 575,on remand 514 F2d 1002,on remand 410 Fs 1024, affmd 545 F2d 1101,cert den 97 S Ct 2187.

law.

The Appellate Term in affirming ruled that if the action was one for "conversion", the three years statute of limitations applied,and if it was on "contract",the six year statute of limitations applied.

It then went on to say that "the law of the case is that the matter is subject of federal jurisdiction,and may not be entertained by a state court(order and decision filed January 21,1972,in the office of the County Clerk,County of New York,Bloom J)".

Finnaly the Appellate Term mistakenly held that "the complaint was dismissed on defendant's motion for summary judgment, which order was affirmed(U.S. Court of Appeals second circuit,order filed July 24, 1975.)"

This complaint was actually against the employer Central Gulf Lines Inc,and not the union,and shows the lack of care that the Appellate Term used in its decision, which did not cite even one argument or citation by petitioner who cited twelve cases in support of his federal maritime argument,including Larios v Victory Carriers 316 F2d 63 (CA2,1963) where it was held that all substantive issues arising out of Maritime claims are controlled by Maritime law regardless of form or forum of suit.

B. REVIEW BY THIS COURT IS WARRANTED TO UPHOLD THE SUPERIORITY OF FEDERAL MARITIME AND CONSTITUTIONAL LAW,WHEN STATE PROCEEDINGS ARE SO DEFECTIVE AS TO WARRANT FEDERAL INTERVENTION.

This Court held in Bulk Carriers v Arquelles ,400 U.S. 358,1971,that the statutory sections of the General Maritime Law controls a seaman's employment,and conditions of employment.See Stevens,64 Harv L Rev 246,1950,Erie R.R. v Tompkins and the uniform General Maritime Law.

This Court has also stated that a state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions of fact...In that situation the Court will examine the record to determine "What facts reasonably ought to be and presumably would be found therefrom by the State Court",Bklyn Savings Bank v Oneil 324 U.S. 697,Merchants Nat.Bank v Richmond 256 U.S. 635.

Petitioner argues that Federal Maritime Law should have been applied in this case. There was no trial held.The Civil Court decided this case on a motion to dismiss without oral argument.

The petitioner pleaded that maritime law prohibits a demand for money for providing a seaman with employment,and cited a criminal case People v Fay,296 N.Y.510,270 App.Div. 261,affmd,cert granted 329 U.S. 697,affmd, 332 U.S. 261,wherein "permit card" members were coerced into paying dues in order to retain their jobs even though they were not

actual members.Mr Fay went to jail for that offense,but in petitioner's case, the coercion of dues,fees,and assessments was determined to be a "conversion",and dismissed because of a three year statute of limitations.

Finally ,petitioner argues that there are *fundamental questions of the parties in the right to have a reasoned decision,with the right to a fair hearing in the sense that it represents a way for the losing party to check whether the Court has given fair attention to his positions,as well as a basis for attacking the lower Courts reasons on appeal.

CONCLUSION

For all the foregoing reasons petitioner respectfully prays that this petition for a writ of certiorari be granted.

Respectfully submitted.

Archie Peltzman,pro se
2483 W 16th St
Bklyn,11214, N.Y.C.

*25 Stanford L rev 651,1973,Muro-Cappelatti-Fundamental guarantees of the parties in Civil litigation:Comparative International and Social Trends.

APPENDIX A

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-seventh *day of* April *A. D. 1978*

Present, HON. CHARLES D. BREITEL, *Chief Judge, presiding.*

1 No. No. 396
Archie Peltzman,
Appellant,
vs.
American Radio Association,
Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that this Court does not have jurisdiction to entertain the motion (CPLR 5602[a][1]; N.Y. Const., Art. 6, §3[b][7]).

Joseph W. Bellacosa
Joseph W. Bellacosa
Clerk of the Court

APPENDIX B

CIVIL COURT OF THE CITY OF NEW YORK
County of NEW YORK

Index No. 64979

SPECIAL TERM, PART I

Motion Cal. No. 52 - 8/9/77

ARCHIE PELTZMAN

against

AMERICAN RADIO ASSOCIATION

Present:

Hon. NANETTE DEMBITZ
Judge.

The following papers used on this motion to _____

submitted this _____ day of _____, 19

	Papers Numbered
Notice of Motion and Affidavits Annexed	
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	
Replying Affidavits	
Filed Papers	
Commission	
Exhibits	
Copies Papers	
Referee's Report	
Stenographer's Minutes	
Stipulation	
Printed Book	

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CIVIL COURT-N.Y. CITY

Motion by defendant to dismiss the complaint on several grounds. Motion is granted on the grounds that the claim is barred by the running of the statute of limitations.

Plaintiff, is a radio officer and a former member of the defendant union. His pro se complaint is styled as a "demand for restitution of dues, fees of assessment" of $1,000 which were extorted or coerced from plaintiff by defendant.

The gravamen of this action is most analagous to an action for conversion.

An action based upon conversion is subject to a three-year period of limitations. As per CPLR 214. See Nichimen & Co., v Framen Steel Supply Co., 253 N.Y.S. 2d 715 (Special Term N.Y. Co. 1964).

As plaintiff admits in his "Affidavit in Support of Motion to Dismiss Defense" he paid fees from March 4, 1968 through June 3,

Dated: _____ J.C.C.

APPENDIX B

page two

Peltzman v American — Dembitz, J.

1971. Plaintiff clearly had more than ample time to file for the relief asked for at bar. In fact during the intervening years plaintiff commenced numerous actions against defendant in several forums, without raising this cause of action. Plaintiff has thereby forfeited his right to sue for the recovery of union dues paid for the 1968-1971 period. The action is therefore dismissed.

Defendant is to serve a copy of this order with notice of entry upon plaintiff.

Dated: August 26, 1977

ND,
J.C.C.

APPENDIX C

9434

At an Appellate Term of the Supreme Court, first department, held at the Court House, Borough of Manhattan, City of New York, on the 8th *day of* December *19* 77

Present:—Hon. THOMAS J. HUGHES *J.P.*

- - XAVIER C. RICCOBONO

- - SIDNEY H. ASCH *Justices*

ARCHIE PELTZMAN,

Plaintiff-Appellant,

vs.

AMERICAN RADIO ASSOCIATION,

Defendant-Respondent.

County Clerk's No. 48633 1977

Cal. No. 355

December, 1977 Term

An appeal having been taken to this court by plaintiff from an order of the Civil Court of the City of New York County of New York entered on the 31st day of August 1977 and the said appeal having been heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED, that the order so appealed from be and the same is hereby affirmed with $10 costs.

Enter

FILED
DEC 8 - 1977
NEW YORK
COUNTY CLERK'S OFFICE

Justice Appellate Term, Supreme Court, first dept.

APPENDIX D

APPELLATE TERM OF THE SUPREME COURT, FIRST DEPARTMENT,

DECEMBER, 1977

PRESENT: HON. THOMAS J. HUGHES, J.P.
HON. XAVIER C. RICCOBONO
HON. SIDNEY H. ASCH,
Justices

- -x

ARCHIE PELTZMAN, :

Plaintiff-Appellant, :

-against- : No. 355

AMERICAN RADIO ASSOCIATION, :

Defendant-Respondent. :

- -x

Appeal by plaintiff, pro se, from an order entered August 31, 1977, in the Civil Court of the City of New York, County of New York (Dembitz, J.) dismissing the action.

PER CURIAM:

Order entered August 31, 1977 (Dembitz, J.) affirmed with $10 costs.

Plaintiff's action to the extent it may be framed as one for conversion is barred by the three year Statute of Limitations, and to the extent it may be framed as one for breach

APPENDIX D

of contract, is barred by the six year Statute of Limitations.

The law of the case is that the matter is subject of federal jurisdiction and may not be entertained by a state court (order and decision filed January 21. 1972, in the office of the County Clerk, County of New York, Bloom, J.).

The complaint was dismissed in the Federal District Court (S.D.N.Y.) on defendant's motion for summary judgment, which order was affirmed (U.S. Court of Appeals, Second Circuit, Order filed July 24, 1975).

I concur

I concur

I concur

FILED
DEC 9 -1977
NEW YORK
COUNTY CLERK'S OFFICE

APPENDIX E

At an Appellate Term of the Supreme Court, first department, held at the Court House, Borough of Manhattan, City of New York, on the 12th *day of* January, 1978.

Present:—Hon. THOMAS J. HUGHES, J.P.
" XAVIER C. RICCOBONO
" SIDNEY H. ASCH *Justices.*

ARCHIE PELTZMAN,
Plaintiff-Appellant,
vs.
AMERICAN RADIO ASSOCIATION,
Defendant-Respondent.

Order upon motion. 48633/77
Cal. No. 355
December, 1977 Term

The above named appellant having by notice of motion dated the 20th day of December 1977 moved for an order granting leave to appeal to the Appellate Division, First Department, from an order of this court dated December 8, 1977,

Now upon reading and filing said notice of motion and the affidavit of Archie Peltzman verified the 20th day of December 1977 and the papers annexed in favor of said motion, and no one appearing in opposition thereto,

IT IS ORDERED that said motion be and the same hereby is denied.

FILED
JAN 12 1978
NEW YORK
CO. CLERK'S OFFICE

Justice, Appellate Term,
Supreme Court, first dept.

APPENDIX F

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on March 9, 1978.

Present—Hon. Vincent A. Lupiano, Justice Presiding
Harold Birns
Myles J. Lane
Leonard H. Sandler
Joseph P. Sullivan, Justices.

Archie Peltzman,

Plaintiff-Appellant,

-against-

American Radio Association,

Defendant-Respondent.

M-250

Order on application for leave to appeal from Appellate Term

An application having been made by the plaintiff-appellant to the Appellate Division of the First Judicial Department for leave to appeal to the Appellate Division from the order of the Appellate Term of the Supreme Court in this action entered in the office of the Clerk of the Supreme Court on January 12, 1978,

and said application having come on to be heard, on reading and filing the notice of application herein, and the affidavit of Archie Peltzman

in support of said application, ~~and the~~

~~in opposition thereto~~, and after hearing Mr. Archie Peltzman appearing pro se for the application, and Mr. no one appearing in opposition thereto,

~~opposed~~,

It is ordered that said application be and the same hereby is denied,

with $20 costs.

ENTER:

JOSEPH J. LUCCHI

Clerk

APPENDIX G

AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

American Radio Association

270 Madison Avenue • New York, N. Y. 10016 • MUrray Hill 9-5754 • Cable Address: ARADIOCIO NEWYORK

W. A. STEINBERG
President
PHILIP A. O'DOUGHERTY
Vice-President
BERNARD L. SMITH
Secy.-Treas.

NATIONAL COUNCIL
JOSEPH Y. RUBIN
TED BERMAN
HARVEY STRICHARTZ
RALPH BAIRD
FLOYD HEPTING

January 13, 1971

Mr. Archie Peltzman
185 Wortman Avenue
Brooklyn, N. Y. 11207

Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association, AFL-CIO and the Central Gulf Steamship Co., you are required as a condition of employment to become a member in good standing of this Organization.

Accordingly, within thirty (30) days from the date hereof, you are required to tender the sum of Two Thousand Dollars ($2,000.00), (together with arrears of all dues and fees, if any,) as the initiation fee required for acquiring Union Membership.

If such payment is not made, we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,

Bernard L. Smith

Bernard L. Smith
Secretary-Treasurer

BLS:LB

Via REGISTERED R.R.R.

cc: SS GREEN RIDGE, % Wilmington Shipping Co.(AIR MAIL,REG.R.R.R)
P.O.Box 1809, Wilmington, N.C. 28401

cc: Central Gulf S.S.Co., New Orleans, La.(AIR MAIL, REG.R.R.R.)
(ccs: Jos.Y.Rubin; Ted Berman; Floyd Hepting) Per: J. P. Vella

APPENDIX H

5

COMPLAINT FOR RETURN OF MONEY EXTORTED BY UNION

THIS IS A DEMAND FOR RESTITUTION OF DUES,FEES,& ASSESSMENTS COERCED FROM THE PLAINTIFF BY THREATS OF DISCRIMINATION IN THE HIRING HALL,IN HIRING& TENURE OF JOBS ,& IN SENIORITY PLACEMENTS ABOARD SHIPS BY THE UNION.

THE COMPLAINT WAS FILED IN SMALL CLAIMS COURT FOR RETURN OF $1)000,& THE JUDGE ORDERED THIS CASE TRANSFERRED TO THE CIVIL COURT.

THE PETITIONER ALLEGES THAT THE EXTORTION,&COERCION OF THE DUES FEES,& ASSESSMENTS IS ILLEGAL UNDER THE MARITIME LAWS,TITLE 46 SEC 599a,& THE LABOR LAWS PROTECTING EMPLOYEES FROM DISCRIMINATION IN HIRING & TENURE.

PETITIONER ALSO BELIEVES THE COERCION OF DUES & FEES IS FORBIDDEN BY THE CIVIL RIGHT'S LAW,& THE EQUAL EMPLOYMENT OPPORTUNITIES ACT SEC & 718,WHICH FORBIDS DISCRIMINATION BASED ON FEDERAL OR STATE LAWS,OR THE CONSTITUTION OF THE UNITED STATES.

PETITIONER STARTED PAYING DUES &FEES IN 1968,AND STOPPED PAYING IN 1971.